

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT MOMBASA

(Coram: Masime, J.A., Gicheru & Kwach, Ag. J.J.A.)

CRIMINAL APPEAL NO. 155 OF 1988

BETWEEN

DAN OLOGI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from an order of the High Court of Kenya at Mombasa (Aragon, J.) dated 30th April, 1986
in

H.C.CR. APPEAL NO. 402 OF 1985)

JUDGMENT OF THE COURT:

The appellant's first appeal to the High Court of Kenya at Mombasa was summarily rejected by Aragon, J. under Section 352(2) of the Criminal Procedure Code. He had been charged in the court of first instance with the offence of stealing contrary to section 275 of the Penal Code and with an alternative count of handling stolen property contrary to section 322(2) of the same Code.

The subject-matter of stealing and/or handling was a typewriter belonging to Dansons Agencies whose office is situated along Moi Avenue, Mombasa. Its value was about Shs. 15,000/-. This typewriter was stolen on 19th March, 1985 after 4.00 p.m. but before 5.00 p.m. At the latter time, the appellant and another were in possession of the typewriter. At this time, the appellant and another were in possession of the typewriter. At this time, the appellant asked Peter Mukura Chege 9P.W.2), a receptionist with the Splendid Hotel, Mombasa, to keep the typewriter for them. The appellant was known to this receptionist as he was a customer to the aforesaid Hotel. He and his companion were to collect the said typewriter which was in a carton on the same day.

Indeed, at about 9.00 p.m. on the same day, the appellant picked up the typewriter. On 20th March, 1985 at about 11.00 a.m. this typewriter in its carton was found by Joseph Wambua Kinyosi 9P.W.3), a supervisor with the Hotel mentioned above, besides the door steps to the bar of the said Hotel. This supervisor handed it to the Hotel's Managing Director who kept it in a store at the Hotel. On 29th May, 1985 the appellant was arrested. On the same day, he led the police to the aforementioned Hotel where it (typewriter) was recovered.

On this evidence, the trial court convicted the appellant for the offence of handling stolen property contrary to section 322 (2) of the Penal Code and sentenced him to 7 years imprisonment with hard labour